

**TEMPORARY CONSTRUCTION PARKING AND ACCESS
LICENSE AGREEMENT**

THIS TEMPORARY CONSTRUCTION PARKING AND ACCESS LICENSE AGREEMENT (the "Agreement") is made and entered into as of this 25th day of September, 2013 (the "Effective Date"), by and between Wheaton Park District, an Illinois park district and unit of local government (the "District"), and Bradford Wheaton 3 LLC, an Illinois limited liability company (the "Licensee"). District and Licensee are hereinafter sometimes individually referred to as a "Party" and together referred to as the "Parties".

RECITALS

- a. District owns certain real property known as Lots 2 through 5 among others in the Mariano's subdivision, Wheaton, Illinois (the "Park District Site").
- b. Licensee owns certain real property known as the Mariano's subdivision, Wheaton, Illinois (the "Project Property").
- c. Licensee desires to develop a shopping center on the Project Property (the "Project") and has requested permission from District to enter upon and use Lot 2 of the Park District Site, as depicted on **Exhibit A** attached to and incorporated by reference in this Agreement (the "Licensed Premises"), for the sole purpose of parking vehicles of construction workers and to provide said construction workers access to the Project site in connection with the execution of the Project (the "Licensed Activities").
- d. Licensee has represented to District and District concurs that limited parking is available for the Project.
- e. In view of the circumstances, District is willing to grant permission to Licensee to use the Licensed Premises for the Licensed Activities, upon and subject to the terms and conditions hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The above recitals are hereby incorporated in their entireties by reference in this Agreement.
2. District hereby grants to Licensee a temporary construction parking and access license (the "License") to use and to allow its affiliates and their respective contractors and subcontractors (hereinafter collectively referred to as "Licensee's Affiliates") to use the Licensed Premises for the Licensed Activities, upon and subject to the terms and conditions set forth in this Agreement and such further items and conditions, if any, as shall be contained in an addendum to this Agreement.
3. The License shall commence on the Effective Date, and shall expire on October 31, 2013, unless extended in writing by District or unless sooner terminated by District in accordance with Paragraph 18, below (the "License Term"). The obligations of Licensee under this Agreement shall survive the expiration or termination of the License and under no circumstances shall any such obligation be deemed discharged until fully performed in accordance with the provisions of this Agreement.
4. The License shall be used and enjoyed solely by Licensee and Licensee's Affiliates and their respective duly authorized employees and agents for the Licensed Activities, and Licensee shall not assign its License rights in whole or in part or grant permission to traverse, enter upon or otherwise use the Licensed Premises to any other person.

5. Except as provided herein, no equipment or machinery shall be brought or permitted to come onto the Licensed Premises, and subject to such reasonable restrictions as shall be specified by District.

6. Parking on the Licensed Premises shall only be allowed Monday through Friday from 6:00 a.m. until 4:00 p.m. No parking shall be allowed on the Licensed Premise on Saturday, Sunday, or from 4:00 p.m. until 6:00 a.m. Monday through Friday. No other equipment, machinery, tools or materials shall be stored or be permitted to remain overnight on the Licensed Premises.

7. No explosives or flammable or hazardous substances of any kind shall be transported across, brought upon, or stored or deposited on the Licensed Premises.

8. The Licensed Premises at all times shall be kept free of accumulations of debris, waste and garbage caused by the Licensed Activities.

9. District shall have the right at any time to:

a. impose weight, load, size and other restrictions which District reasonably determines are necessary or advisable under the circumstances;

b. suspend the License for safety or health reasons or for breach by Licensee of any of its obligations under this Agreement, without waiving District's right to terminate the License as provided in Paragraph 18, below; and

c. eject from the Licensed Premises any person or vehicle not authorized to use same.

10. District's reservation of such rights or its failure to exercise same shall not impose or create any responsibility or liability on District or affect, reduce or nullify in any way Licensee's obligations under this Agreement, including without limitation Licensee's obligations under Paragraphs 15, and 16, below.

11. District shall have the right to use the Licensed Premises at any time for any purpose which does not unreasonably interfere with the License. District shall have the right to enter upon the Licensed Premises at any time(s) to inspect, maintain or repair the Licensed Premises including the Licensed Premises and improvements thereon, to determine Licensee's and Licensee's Affiliates' compliance with the terms and conditions of this Agreement, and for any other lawful purpose(s).

12. Licensee shall conduct and shall require Licensee's Affiliates and their respective employees and agents to conduct the Licensed Activities at all times in a safe manner.

13. Licensee shall comply with and shall require Licensee's Affiliates to comply with all applicable federal, state and local laws, rules and regulations in the conduct of the Licensed Activities.

14. Upon termination of the License by expiration or otherwise, Licensee at its sole cost and expense shall restore the Licensed Premises to the condition existing immediately prior to the commencement of any activity thereon by Licensee or any of Licensee's Affiliates. Additionally, Licensee at its sole cost and expense shall repair all damage to the Licensed Premises, any improvements located thereon and replace all lost or destroyed items. By way of example and not limitation, all turf areas will be replaced and sodded to match the existing turf areas adjacent to the Licensed Premises. Any damage to sidewalks or paths will be repaired or replaced as reasonably deemed necessary by District. All restoration, repair and replacement shall be completed to the reasonable satisfaction of District within thirty (30) days after the end of the License Term or, if due to weather conditions or other

circumstances which, in District's opinion, would make any such restoration, repair and replacement inadvisable, then within such later time period as District reasonably shall request.

15. Licensee shall defend, indemnify and hold harmless District, its park commissioners, officers, employees, volunteers and agents (District and such other persons being hereinafter collectively called the "Indemnitees") against and from any and all liabilities, claims, losses, costs, damages and expenses of every nature whatsoever, including without limitation reasonable attorneys' and paralegal fees, suffered, incurred or sustained by any of the Indemnitees, including without limitation liabilities for the death of or injury to any person or the loss, destruction or theft of or damage to any property, relating directly or indirectly to, or arising directly or indirectly from, the exercise by Licensee, Licensee's Affiliates, or any other person acting on their behalf or with their authority or permission, of the rights and privileges granted Licensee under this Agreement. Licensee shall similarly defend, indemnify and hold harmless the Indemnitees against and from any and all claims, losses, costs, damages and expenses, including without limitation reasonable attorneys' and paralegal fees, suffered, sustained or incurred by any of the Indemnitees as a result of Licensee's breach of any provision of this Agreement or otherwise incurred by any of the Indemnitees in enforcing the terms of this Agreement.

16. In addition to, and in furtherance and not in limitation of, Licensee's obligations in Paragraph 15, above, and at no cost to District, Licensee shall obtain and keep in full force and effect insurance of the types and amounts, for so long as any claim relating to the Project legally may be asserted as provided in **Exhibit B**, attached to and incorporated by reference in this Agreement, and shall require Licensee's Affiliates to obtain and keep in full force and effect for so long as any claim relating to the Project legally may be asserted, , as provided on **Exhibit C**, attached to and incorporated by reference in this Agreement.

17. Licensee shall not, and shall require Licensee's Affiliates not to, cause or suffer or permit to be created any mechanic's or materialmen's liens or claims against the Licensed Premises. Licensee shall, and shall require Licensee's Affiliates to, defend, indemnify and hold harmless District from and against any such claims or liens.

18. The License granted Licensee hereunder may be terminated prior to its expiration date:

- a. immediately upon written notice to Licensee in the event Licensee or any of Licensee's Affiliates fails to procure or maintain the insurance required under Paragraph 16, above, or shall fail to provide evidence of such coverage as required above; or
- b. immediately upon Licensee's failure to remedy or obtain remedy by Licensee's Affiliates of any breach of any term or condition of this License Agreement (other than Paragraph 16 regarding insurance) within ten (10) days after written notice of such breach is delivered to Licensee; or
- c. immediately upon abandonment of the Project by Licensee or Licensee's Affiliates. For purposes of this subparagraph, abandonment shall be deemed to have occurred in the event no activity is conducted on the Project for a period of 30 consecutive days.

19. This Agreement and the License granted hereunder does not create any title to or interest in the Park District Site, in whole or in part, in favor of Licensee or any of Licensee's Affiliates, or any property rights appurtenant to the Project Property.

20. No waiver of any rights which District has in the event of any default or breach by Licensee under this Agreement shall be implied from failure by District to take any action on account of such breach or default, and no express waiver shall affect any breach or default other than the breach or default specified in the express waiver and then only for the time and to the extent therein stated.

21. Notices shall be deemed properly given hereunder if in writing and either hand delivered or sent by registered or certified mail, return receipt requested, to the Parties at their respective addresses provided below, or as either party may other-wise direct in writing to the other party from time to time. Notices sent by mail shall be deemed delivered the second day after deposit in the mail.

If to Licensee:

Bradford Real Estate Corp.
30 South Wacker Drive, Suite 2850
Chicago, Illinois 60606
Attention: Chad Jones

If to District:

Wheaton Park District
102 E. Wesley Street
Wheaton, Illinois 60187
Attention: Executive Director

22. This Agreement contains the entire agreement between the Parties with respect to the use of the Park by Licensee in connection with the Project and cannot be modified except by a writing, dated subsequent to the date hereof and signed by both Parties.

23. For purposes of this Agreement, the acts or omissions of any employee, contractor, agent, relative, or representative of Licensee shall also constitute the error or omission of Licensee.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by a duly authorized officer, as of the year and date first above written.

DISTRICT:
WHEATON PARK DISTRICT

By: _____

Title: _____

LICENSEE:
BRADFORD WHEATON 3 LLC
BY: BRADFORD REAL ESTATE SERVICES CORP., ITS MANAGER

By: _____

Title: _____

CHAD W. JONES
TREASURER

EXHIBIT A
LICENSED PREMISES

EXHIBIT B
INSURANCE REQUIREMENTS FOR LICENSEE

Licensee shall procure and maintain the following types and amounts of insurance:

A. Commercial General and Umbrella Liability Insurance

Licensee shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The District shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the District. Any insurance or self-insurance maintained by the District shall be excess of the Licensee's insurance and shall not contribute with it.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

If the District has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Agreement, Licensee waives all rights against the District and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to Licensee's use of the Licensed Premises.

B. Continuing Completed Operations Liability Insurance

Licensee shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each occurrence for at least three years following substantial completion of the work.

Continuing CGL insurance shall be written on ISO occurrence form CG 00 01 10 93, or substitute form providing equivalent coverage, and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract.

Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit.

Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

C. Business Auto and Umbrella Liability Insurance

Licensee shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a

limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

D. Workers Compensation Insurance

Licensee shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$2,000,000 each accident for bodily injury by accident or \$2,000,000 each employee for bodily injury by disease.

E. General Insurance Provisions

1. Evidence of Insurance

Prior to beginning the Licensed Activities, Licensee shall furnish the District with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days written notice to the District prior to the cancellation or material change of any insurance referred to therein. Written notice to the District shall be by certified mail, return receipt requested.

Failure of the District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the District to identify a deficiency from evidence that is provided shall not be construed as a waiver of Licensee's obligation to maintain such insurance.

The District shall have the right, but not the obligation, of prohibiting Licensee from entering the Licensed Premises until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the District.

Failure to maintain the required insurance may result in termination of Licensee's use of the Licensed Premises.

With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to the District whenever requested.

Licensee shall provide certified copies of all insurance policies required above within 10 days of the District's written request for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the District has the right to reject insurance written by an insurer it deems unacceptable.

3. Cross-Liability Coverage

If Licensee's liability policies do not contain the standard ISO separation of insureds' provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the District. At the option of the District, the Licensee may be asked to eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

5. Subcontractors

Licensee shall cause each subcontractor employed by Licensee to purchase and maintain insurance of the type specified above. When requested by the District, Licensee shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

EXHIBIT C

INSURANCE REQUIREMENTS FOR LICENSEE'S AFFILIATES

Licensee shall require Licensee's Affiliates to procure and maintain, the following types and amounts of insurance:

A. Commercial General and Umbrella Liability Insurance

Licensee's Affiliates shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The District shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the District. Any insurance or self-insurance maintained by the District shall be excess of Licensee's Affiliates' insurance and shall not contribute with it.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

If the District has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Agreement, Licensee's Affiliates waive all rights against the District and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to Licensee's Affiliates' use of the Licensed Premises.

B. Continuing Completed Operations Liability Insurance

Licensee's Affiliates shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each occurrence for at least three years following substantial completion of the work.

Continuing CGL insurance shall be written on ISO occurrence form CG 00 01 10 93, or substitute form providing equivalent coverage, and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract.

Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit.

Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

C. Business Auto and Umbrella Liability Insurance

Licensee's Affiliates shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out

of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

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All certificates shall provide for 30 days written notice to the District prior to the cancellation or material change of any insurance referred to therein. Written notice to the District shall be by certified mail, return receipt requested.

Failure of the District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the District to identify a deficiency from evidence that is provided shall not be construed as a waiver of Licensee's Affiliates' obligation to maintain such insurance.

The District shall have the right, but not the obligation, of prohibiting Licensee's Affiliates from entering the Licensed Premises until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the District.

Failure to maintain the required insurance may result in termination of Licensee's Affiliate's use of the Licensed Premises.

With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to the District whenever requested.

Licensee's Affiliates shall provide certified copies of all insurance policies required above within 10 days of the District's written request for said copies.

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5. Subcontractors

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